

MEMORANDUM OF UNDERSTANDING
Between the
SECRETARY OF STATE FOR
ENERGY AND CLIMATE CHANGE (DECC)

and

Nottingham City Council

MEMORANDUM OF UNDERSTANDING

Parties

1. The parties to this MoU are:
 - a. The Secretary of State for Energy and Climate Change (the “**Secretary of State**” or the “**SoS**”), whose principal office is at 3 Whitehall Place, London, SW1A 2AW, and
 - b. Nottingham City Council (the “**Authority**”), whose address is Enviroenergy, 12 London Road, NG2 3AB.

Background

2. The Department of Energy and Climate Change (“**DECC**”) has established a Heat Networks Delivery Unit (“**HNDU**”) with the objective of supporting a number of local authorities in England and Wales to identify and evaluate opportunities to develop new heating and cooling networks and to expand existing heating and cooling networks. The Authority has applied for grant funding in one of the HNDU bidding rounds.
3. The Secretary of State has agreed to provide grant funding to the Authority following successful evaluation of the application and subsequent agreements reached with DECC and the Authority has agreed to spend such funds to pay third parties to secure their delivery of the agreed heat network development stages as set out in the table in Annex 2 of this MoU.
4. The parties wish to record their agreement. This MoU therefore sets out, amongst other things, the monies available to the Authority under the grant, payment of the grant, how funds granted may be spent, commitments in relation to the administration of the grant and otherwise and how the parties will behave.
5. In carrying out its activities, the HNDU may offer guidance and other non-financial support to the Authority in relation to the agreed heat network development stages set out in Annex 2 of this MoU (“**Guidance**”). This MoU also clarifies the nature of the Guidance that the HNDU may choose to provide and records the parties’ agreement as to liability and indemnities when the HNDU provides Guidance.

Definitions

6. The following definitions will apply throughout this MoU:

“Agreed heat network development stages” means the scope of work HNDU has agreed to support through grant funding and/or Guidance, a summary of which is set out in the table in Annex 2 of this MoU and more detail is recorded in the Authority’s application and subsequent agreements reached between DECC and the Authority. This will sometimes be a subset of the Project;

“External Costs” means money paid by the Authority to third parties to secure their delivery of the Agreed heat network development stages;

“Internal Costs” means any costs incurred by the Authority which are not External Costs;

“MoU” means this memorandum of understanding including its annexes;

“Notification Letter” means the letter sent to you from John Saunders (Investment Director, Heat Networks Delivery Unit, DECC) dated 11 July 2016 notifying you that the Secretary of State for Energy and Climate Change would like to offer you HNDU grant funding;

“Procure” means to run an open and transparent competitive process to select a third party to deliver selected works and includes, but is not limited to, compliance with all relevant requirements of law relating to public procurement in so far as they apply; and

“Project” means the heat network development project (as per the application submitted by the Authority as part of the HNDU bidding round and any subsequent agreements reached with DECC), not the build, operation or maintenance of a heat network itself.

Compliance with MoU

7. The Authority will at all times act in accordance with the agreements recorded in this MoU.

Payment of the grant

8. The Secretary of State will pay the Authority the amount specified in Annex 2 after HNDU considers that any requirements specified in the Notification Letter have been met and HNDU have received the completed Section 151 Officer Declaration (Annex 3) and a valid grant claim form.

Purpose of grant

9. The parties have agreed that the Authority will spend the funds granted to it only on the External Costs, and in accordance with the terms of this MoU.

Prohibited use of the grant

10. Without prejudice to any other provisions of this MoU, the parties have agreed that the grant will not be used:

- a) to pay for any costs associated with constructing, operating or maintaining heat networks;
- b) to pay for any costs incurred before the date the MoU is signed, or before any earlier date specified for the use of the grant in this MoU;
- c) to pay any Internal Costs;
- d) to pay the costs of events and workshops held by the Authority to manage stakeholders;
- e) for activities of a political or exclusively religious nature;
- f) in respect of costs reimbursed or to be reimbursed by funding from public authorities or from the private sector;
- g) in connection with the receipt of contributions in kind (a contribution in goods or services as opposed to money);
- h) to cover interest payments (including service charge payments for finance leases);
- i) for the giving of gifts to individuals;
- j) for entertaining (entertaining for this purpose includes anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
- k) to pay statutory fines, criminal fines or penalties; or
- l) in respect of Value Added Tax that the Authority is able to reclaim from HM Revenue and Customs.

State Aid and Procurement

11. The Secretary of State considers that the grant constitutes a state aid under Article 107 of the Treaty on the Functioning of the European Union. The European Commission has established a narrow range of exemptions in which it considers state aid to be lawful.
12. In this case, the Secretary of State awards the grant as aid for environmental studies in accordance with Article 49 of Commission Regulation 651/2014 (General Block Exemption Regulation) (environmental studies).
13. The funding may only be used in respect of eligible costs permitted under Article 49 of the General Block Exemption Regulation. The funding in the sum of £50,000 is being paid on the basis that the total cost for the project is £100,000, and the total public funding paid therefore represents no more than 50% of the total project cost, in accordance with Article 49(3) of the General Block Exemption Regulation.
14. For the purpose of paragraph 13, public funding includes any funding from, or attributable to, any public authority or EU institution.
15. The Authority recognises that under Article 1(4) of the Block Exemption, it is not entitled to the grant if it is, or is part of, an undertaking which is subject to a recovery order following a previous decision of the EU Commission declaring an aid illegal and incompatible with the internal market.
16. The parties agree that, for the purpose of receiving the funding:
 - a) the Authority will publish on its website the results of all work which has benefitted from HNDU grant funding or Guidance and where the Authority is unable to publish such results owing to any requirements of law or for the protection of national security, the Authority will redact or anonymise parts of the results in a manner to enable the Authority to publish the modified results on its website without such work conferring an advantage on the Authority or any other person over third parties; and
 - b) the Authority will administer the grant in a manner which ensures compliance with EU State Aid rules taking into consideration all the circumstances, including any decision of the Authority to play any role in the future delivery of a heat network to which the results of the Project relate (for example a heat network's design, build, ownership or operation), and the Authority is responsible for ensuring this.
17. The parties agree that, in respect of the Authority's use of the funding:

- a) the Authority will Procure work supported by HNDU grant funding or Guidance in compliance with the Public Contracts Regulations 2015; and
 - b) the Authority will spend the grant in accordance with EU State Aid rules and the Authority is responsible for ensuring this.
18. The parties also agree that, in the event that any State Aid given by the Authority is required by law to be recovered from any undertaking, the Authority will be responsible for taking the necessary steps to recover that aid.

Reduction, withdrawal and repayment

19. In accordance with the following paragraphs, it is the understanding of the parties that the Secretary of State may:
- a) withdraw or reduce the grant, where the grant, or any part of it, has not been paid; and/or
 - b) ask the Authority to repay all, or any proportion of, the grant, together with interest (calculated in accordance with paragraph 23 and, in the case of late payment, paragraph 24), where the grant, or any part of it, has been paid (including in cases where the Authority has already spent the grant).
20. The parties have agreed that the Secretary of State may exercise the options referred to in paragraph 19 where the Secretary of State:
- a) is required to cease grant funding or to recover all, or any proportion, of the grant by virtue of a decision of a court or of the European Commission;
 - b) has reasonable grounds to consider that the payment of the grant, or the Authority's use of it, contravenes any requirement of law, in particular (but without limitation) EU law relating to State Aid; or
 - c) has reasonable grounds to consider that the Authority has not acted or does not intend to act in accordance with the agreements documented in this MOU.
21. When exercising the options referred to in paragraph 19, the Secretary of State will notify the Authority of the grounds concerned and (except in a case falling within paragraph 20a), as far as possible, consider the Authority's representations made within any reasonable timeframe required by the Secretary of State.
22. A decision by the Secretary of State to ask the Authority to repay the grant will be communicated by letter, and the Authority will make that repayment

within 30 days of the date of that letter or within any later reasonable timeframe agreed by the Secretary of State in writing.

23. Where the Secretary of State requests repayment, interest will be calculated from the date of the grant payment, in accordance with:
- a) the retail prices index over the relevant period (that index being taken as 0% for any period during which the index is negative); or
 - b) any other rate required by law in the circumstances (including any rate required under EU law relating to State Aid), if it is higher.
24. Where the Authority does not make the relevant repayment within the timeframe specified in paragraph 22, further interest on the outstanding sum (inclusive of interest already charged under paragraph 23) will accrue, after that deadline, at the statutory rate of interest under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 or any other rate required by law in the circumstances, if it is higher.
25. Should the Secretary of State not exercise his options under paragraph 19 or delay in doing so, this shall not constitute a waiver of those rights unless the Secretary of State confirms such a waiver in writing. Furthermore, any such written waiver shall not be taken as a precedent for any other, or subsequent, circumstances.

Suspension

26. The parties have agreed that the Secretary of State may suspend payment of the grant where:
- a) one of the grounds in paragraph 20 arises or one of the requirements under the MoU are not complied with by the Authority, pending consideration of the circumstances and the making of a decision; or
 - b) the Secretary of State has reasonable cause for concern that one of those grounds may have arisen, or is likely to arise.
27. In the case of any suspension, unless the Secretary of State confirms a contrary agreement in writing:
- a) the Authority will continue to comply with the requirements of this MoU including any deadlines occurring during the period of suspension; but
 - b) the Authority will not make any further use of the grant until the Secretary of State has authorised continued use of the grant in writing.
28. The Authority will inform the Secretary of State in writing if it has any concerns that any of the grounds in paragraph 20 might arise or that it will

not be able to comply with the requirements of the MoU. If such concerns arise after the Authority has received a grant payment, the Authority will not make any use of the grant until the Secretary of State has authorised continued use of the grant in writing.

Agreed use of underspend

29. In the event that the Authority does not use all of the grant funding to secure delivery of the Agreed heat network development stages:

- a) the parties will work together to agree how the Authority will spend any unspent grant funding on heat network development activity; and
- b) if the parties are unable to reach an agreement described in paragraph a), the Authority has agreed to repay the unspent grant funding.

Working with HNDU

30. On receipt of a request by the Authority HNDU may decide to provide Guidance to the Authority. The parties agree that HNDU will provide such Guidance only if HNDU considers that it has sufficient resource and is otherwise able to. The scope of the Guidance will remain at the HNDU's discretion and may include assisting the Authority to review key documentation and answering ad hoc queries by telephone. In any case where the HNDU provides Guidance the Authority must provide it with any relevant project documentation.

31. The HNDU will consider requests for Guidance on a case by case basis but will not:

- a) provide financial advice, legal advice or any other advice;
- b) create heat network Project documents for the Authority; or
- c) participate actively in Authority procurement.

Information sharing

32. The Secretary of State may share any information relevant to the Project, including the grant and Guidance, with other public authorities and their agents and the European Commission if the Secretary of State considers this necessary.

33. In order to assist the Secretary of State and the HNDU in their work, the Authority may be asked to provide information and general assistance at any point while the Agreed heat network development stages are being

completed and up to five years after their completion. The Authority has agreed to respond to any requests for information and general assistance promptly and accurately.

Notices and contacts

34. The parties agree to contact one another using the contact information set out in Annex 1.

Freedom of information

35. The parties may be obliged to disclose information relating to the Project, including the grant, Guidance and this MoU under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or under any other requirement of law.

36. The parties will assist, and cooperate with each other as reasonably requested, to facilitate compliance with those requirements.

37. In the event that the Secretary of State provides information in response to a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and any other requirements of law, the Secretary of State may make that response publicly available for the purposes of transparency.

Publicity

38. The Authority agrees not to publicise their grant until such time as the Secretary of State has made an official announcement of the amounts of the grants awarded from the relevant bidding round. Following that announcement the Authority may promote their grant and any HNDU involvement.

Record keeping

39. The Authority has agreed to keep records relating to any spending funded (or defrayed) by the grant. Such records should indicate:

- a. the identity of the third party concerned and their business;
- b. the amounts they have been given;
- c. the purpose for which the money was spent;
- d. evidence that the contracts have been awarded in accordance with public procurement law;

- e. any records, documentation or information required to be retained for the purpose of complying with rules governing State Aid; and
- f. any significant sub-contracting by the Authority.

Monitoring and Audit

40. The Authority has agreed to:

- a. respond fully, truthfully and promptly to any enquiries the Secretary of State, or the Comptroller and Auditor General, or their representatives, may make about the Agreed heat network development stages or the use of the grant and provide any information and evidence reasonably requested, including by providing a statement of grant usage (at such times, and in such form, as they may reasonably specify);
- b. allow the Secretary of State, the Comptroller and Auditor General, and their representatives, access to all relevant documents and records, and reasonable access for inspecting any relevant site; and
- c. where requested, ensure that any information or evidence provided to the Secretary of State, the Comptroller and Auditor General, or their representatives, is audited by an identified and independent reporting accountant or otherwise confirmed or verified by a person of such other relevant expertise as they may reasonably specify.

Intellectual property

41. In undertaking the Agreed heat network development stages, the Authority has agreed not to infringe the intellectual property rights of any third party.

42. Unless otherwise agreed with DECC, where the Agreed heat network development stages give rise to the generation of any intellectual property, the Authority agrees not to subsequently seek to make profit from the use of such intellectual property, for example through the use of licences.

43. The Authority agrees to allow the Secretary of State (and for these purposes this includes the Secretary of State for Energy and Climate Change and any Secretary of State fulfilling similar functions in the future) and any employees and contractors acting on his behalf royalty-free use of any intellectual property, deliverables or work undertaken in relation to the Agreed heat network development stages.

Compliance with the law

44. The Authority has agreed to comply with all laws and regulatory requirements and applicable standards.

Anti-discrimination

45. The Authority has agreed to comply with the requirements of the Equality Act 2010 and avoid any unlawful discrimination.

Responsibility for employees, contractors, agents and partners

46. The Authority has agreed to ensure that its employees, contractors, agents and partners comply with the principles set out in the MoU and that the Authority will be responsible for any breach by them of those principles. In particular, the Authority has agreed to be responsible for ensuring that other local authorities and/or organisations referred to in the application, or which participate in the Project, comply with the principles of this MoU.

Warranties

47. In agreeing to this MoU, the Authority represents and warrants that:

- a. it has full capacity and authority to undertake the Agreed heat network development stages and to agree to the principles of the MoU and its Annexes;
- b. it will obtain any consents necessary to undertake the Agreed heat network development stages; and
- c. the information and evidence in its application and any other information provided by the Authority remains true, complete and accurate, and that its circumstances have not materially changed since submitting its application or providing further information to the DECC or reaching further agreements with DECC, the Authority knows of the existence of no circumstances which might materially and adversely impact on its ability to undertake the Agreed heat network development stages or meet with the principles set out in the MoU.

Limitation of liability

48. The parties agree that the Secretary of State's liability to the Authority is limited to payment of the grant (and payment of the grant is subject to the Authority's compliance with the principles of the MoU and to upholding the Secretary of State's rights set out therein). The Authority remains entirely responsible for its risks and liabilities in undertaking the Agreed heat

network development stages and delivering the Project, and the Secretary of State shall have no liability for any consequence, direct or indirect, that may arise through the Authority's undertaking of the Agreed heat network development stages and delivering the Project, its use of the grant, or reliance by the Authority on any support or guidance from HNDU or other DECC officials including on any Guidance.

Indemnity

49. The Authority agrees to indemnify the Secretary of State against all claims, demands, actions, proceedings, costs, charges, expenses, losses, damages or other liabilities arising from the Authority's acts or omissions, or those of its employees, contractors, agents, partners, other local authorities and/or organisations referred to in the application, or which participate in the undertaking of the Agreed heat network development stages, in using the grant or in benefiting from any Guidance.

Variation

50. No variation of the provisions set out or referred to in this MoU will be effective unless it is agreed in writing and signed by both parties. This does not prevent the Secretary of State making reasonable changes in relation to the administrative arrangements in MoU (such as departmental contact details).

Status

51. This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties do, however, enter into the MoU intending to honour all their commitments under it.

52. Nothing in this MoU is intended to, or shall be deemed to, establish any partnership, joint venture or relationship of employment between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party. Accordingly, the Authority will not hold itself out as having any such relationship with the Secretary of State.

Further funding

53. The Secretary of State is under no obligation to provide the Authority with any further funding in respect of the Agreed heat network development stages, the Project or for any other purpose.
54. An HNDU application, successful or not, made by an Authority does not preclude the Authority from applying for HNDU grant funding, guidance or support in subsequent HNDU bidding rounds.

Law and jurisdiction

55. This MoU shall be governed by and construed in accordance with English law, and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

References

56. In this MoU and its Annexes references to legislation, including EU legislation and any documents issued by the EU institutions, are to that legislation as amended or re-enacted from time to time (including any amendment or re-enactment having taken place before the date of this MoU).

Memorandum of Understanding
between the
Department of Energy and Climate Change
and
Nottingham City Council



Signed:-

For the Secretary of State for Energy and Climate Change

Name: John Saunders

Date: 11 July 2016

Position: Investment Director, Heat Networks Delivery Unit, DECC

Signed:

For Nottingham City Council

Name: **Date:**

Position:

Annex 1: Key local authority and DECC contact details

Local Authority lead contact (LA to complete)	
Local Authority name	Nottingham City Council
Contact name	
Job title	
Address including postcode	
Telephone	
Email	

DECC lead contact	
Contact name	John Saunders
Job title	Investment Director
Address including postcode	Ground Floor, Kings Building Heat Networks Delivery Unit c/o 3 Whitehall Place London SW1A 2AW
Telephone	0300 068 2877
Email	hndu@decc.gsi.gov.uk

Annex 2: Heat network development stages HNDU have agreed to support

Project name: Island Site District Heating project

Project description from Authority HNDU application: Detailed design for heat network on new development site "the island", a temporary gas CHP source within the existing heat station (or on the site) to serve it whilst the EfW plant is expanded, feasibility for a heat store and increased pumping capacity.

Change to approved scope of works: Funding will be granted in a state aid compliant way, under the GBER exemption, which has a cap of 50% of funding for project costs.

The funding does not include Detailed Project Development.

HNDU consider the local authority should undertake initial energy masterplanning specific to the Island site before undertaking techno-economic feasibility for expanding the network to this site, and in relation to determining recommended heat supply approach and the implications on the existing network assets.

The breakdown of total cost and funding is as follows:

- Costs: Mapping = £5,000
Masterplanning = £10,000
Feasibility = £65,000.
In addition, expect Project Management costs of £20,000 to be pro-rata'd across these three development stages.
Total expected costs = £100,000.
- Therefore HNDU funding:
Mapping = £3,125
Masterplanning = £6,250
Feasibility = £40,625.
Total HNDU funding = £50,000.

Heat network development stage description	Grant funding
Heat mapping	3125
Energy masterplanning	6250
Feasibility study	40625
Detailed project development	
Commercialisation	

Heat Networks Delivery Unit Memorandum of Understanding

Total	£50000
--------------	---------------

Annex 3: Section 151 Officer Declaration

In my position as the Section 151 Officer for Nottingham City Council, I confirm that:

- a) Nottingham City Council will accept the grant funding that it has been offered through the HNDU;
- b) The information and evidence pertaining to future grant claims will be complete, true and accurate;
- c) Nottingham City Council will spend the grant money on carrying out the Agreed heat network development stages, in accordance with the terms of the MoU; *and*
- d) Nottingham City Council will comply with the provisions of the Memorandum of Understanding dated 11 July 2016 in connection with its delivery of the Agreed heat network development stages.

Signature:

Name:

Position:

Date: